

# Office of the Independent Police Auditor

## Monthly Report

April 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

May 14, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period April 1, 2012 through April 30, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

### **Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA <sup>4</sup>	Number of Cases Appealed by CRB <sup>5</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0

### **Types of Cases Filed**

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	1
<b>TOTAL</b>	<b>6</b>

### **Citizen Complaints Received per Department**

OIPA	0
BART Police Department	5
<b>TOTAL</b>	<b>5</b>

**Complaints/Investigations Initiated During Reporting Period****Actions Taken/# of Days Elapsed<sup>6</sup>**

During the month of April 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1	Arrest or Detention; Performance of Duty; Procedure	An investigation was initiated.	25
2	Bias-Based Policing	An investigation was initiated.	28
3	Bias-Based Policing	An investigation was initiated.	29
4	Arrest or Detention	An investigation was initiated.	32
5	Arrest or Detention	An investigation was initiated.	42

During the month of April 2012, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Courtesy	An investigation was initiated.	16

### Complaints/Investigations Concluded During Reporting Period

#### Dispositions/# of Days Elapsed

During the month of April 2012, 10 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>7</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-047)	<u>Police Officer #1</u> • Force • Procedure	<u>Police Officer #1</u> • Force – Unfounded • Procedure – Exonerated	259	228
2 (IA2011-046)	<u>Police Officer #1</u> • Performance of Duty  <u>Police Officer #2</u> • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Exonerated  <u>Police Officer #2</u> • Performance of Duty – Exonerated	271	244
3 (IA2011-037)	<u>Police Officer #1</u> • Force • Conduct Unbecoming an Officer • Courtesy	<u>Police Officer #1</u> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded	329	298
4 (IA2011-033)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer (2 counts) • Courtesy (2 counts)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer (Count 1) – Unfounded • Conduct Unbecoming an Officer (Count 2) – Unfounded • Courtesy (Count 1) – Unfounded • Courtesy (Count 2) – Unfounded	347	313

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>		
5 (IA2011-030)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>	356	325
6 (IA2011-025)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Search or Seizure</li> <li>• Conduct Unbecoming an Officer (2 counts)</li> <li>• Courtesy (2 counts)</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Search or Seizure – Exonerated</li> <li>• Conduct Unbecoming an Officer (Count 1) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 2) – Unfounded</li> <li>• Courtesy (Count 1) – Not Sustained</li> <li>• Courtesy (Count 2) – Unfounded</li> </ul>	374	343
7 (IA2011-027)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Policy Complaint</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Policy Complaint</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Policy Complaint – Exonerated</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Policy Complaint – Exonerated</li> </ul>	375	335

<p>8 (IA2011-022)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty (2 counts)</li> <li>• Procedure</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty (Count 1) – Not Sustained</li> <li>• Neglect of Duty (Count 2) – Not Sustained</li> <li>• Procedure – Not Sustained</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure – Not Sustained</li> </ul>	<p>383</p>	<p>357</p>
<p>9 (IA2011-019)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing (2 counts)</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure/Policy</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing (Count 1) – Not Sustained</li> <li>• Bias Based Policing (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure/Policy – Not Sustained</li> </ul>	<p>406</p>	<p>366</p>

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure/Policy</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure/Policy – Not Sustained</li> </ul>		
	<u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure/Policy</li> </ul>	<u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure/Policy – Not Sustained</li> </ul>		
10 (IA2011-016)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Conduct Unbecoming an Officer</li> <li>• Procedure (2 counts)</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Procedure (Count 1) – Sustained</li> <li>• Procedure (Count 2) – Sustained</li> </ul>	430	399*

\*The one year limitation on completing the investigation into this incident was tolled from May 5, 2011 until October 18, 2011 pursuant to a waiver made by the involved officer. Accounting for this tolling period, the number of days taken to complete the investigation would be reduced to 233.

During the month of April 2012, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	# of Days Elapsed Since Investigation Initiated	# of Days Taken to Complete Investigation
1 (IA2011-082)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Procedure/Policy (3 counts)</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness – Sustained</li> <li>• Procedure/Policy (Count 1) – Sustained</li> <li>• Procedure/Policy (Count 2) – Sustained</li> <li>• Procedure/Policy (Count 3) – Sustained</li> </ul>	153	113

#### **Complaints/Investigations Concluded Prior to Current Reporting Period**

##### **Dispositions/# of Days Elapsed**

1 Citizen Complaint was closed during March 2012 without being reported as such because its status was not fully updated in the BART Police Department's Internal Affairs database until later. Therefore, it is being reported on here.

Complaint # (IA Case #)	Nature of Complaint	Disposition	# of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-003)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>	133	87



	<u>Police Officer #4</u> • Neglect of Duty	<u>Police Officer #4</u> • Neglect of Duty – Unfounded		
	<u>Police Officer #5</u> • Neglect of Duty	<u>Police Officer #5</u> • Neglect of Duty – Unfounded		
	<u>Police Officer #6</u> • Neglect of Duty	<u>Police Officer #6</u> • Neglect of Duty – Unfounded		
	<u>Civilian #1</u> • Neglect of Duty	<u>Civilian #1</u> • Neglect of Duty – Unfounded		
	<u>Civilian #2</u> • Neglect of Duty	<u>Civilian #2</u> • Neglect of Duty – Unfounded		
	<u>Civilian #3</u> • Neglect of Duty	<u>Civilian #3</u> • Neglect of Duty – Unfounded		
	<u>Civilian #4</u> • Neglect of Duty	<u>Civilian #4</u> • Neglect of Duty – Unfounded		

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

<sup>3</sup> This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

<sup>4</sup> This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

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<sup>5</sup> This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

<sup>6</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>7</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)